

Export of cultural goods under Spanish Law

uc3m | Universidad **Carlos III** de Madrid
Departamento de Derecho Privado

Yolanda Bergel Sainz de Baranda

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Different interests involved in the export of cultural goods:

The State: watches over the conservation, preservation and enrichment of the Spanish Cultural/Historic Patrimony/Heritage

Owners: may be interested in export to obtain a higher price in the international market

Art dealers: less obstacles facilitate their job and boost the market

Public and private nature of cultural goods:

Art. 33 SC.

1. Recognition of the right to private property. 2. The social function of private property shall determine its content, in accordance with the law.

Art. 46 SC.

Public authorities shall guarantee the preservation and promote the enrichment of the historic, cultural and artistic heritage of the peoples of Spain and of the property of which it consists, regardless of its legal status and ownership. Criminal law shall punish the offences against this heritage.

The social function of the right of property grants the State the power to establish limits to private ownership of cultural goods.

Those limits have to be established by law and must respect the essential content of the right of private property (art. 53.1 SC). The limitations have to be proportionate and justified.

Legal rules applicable to export of works of art:

Law 16/1985, of June 25, of Spanish Historical Heritage (arts. 5, 29, 30, 32, 33, and 76.1.h) (SHHL)

Royal Decree 111/1986, of January 10, legal development of Law 16/1985 (arts. 45 to 57)

Regulation (CE) 116/2009, of December 18, 2008, relating to the export of cultural goods

Organic law 12/1995, of December 12, for the suppression of smuggling (arts. 2, 3, 5, 11 and 12)

Types of goods in the Spanish Historical Heritage Law:

- **Goods of Cultural Interest (BIC).** Movable or immovable goods
- Goods included in the General Inventory of Historical Heritage Goods **(Inventoried)**. Movable
- **Spanish Historical Patrimony in General.**

Concept of export:

- Art. 5.1 SHHL: "For the purposes of this Law, export is the **exit from the Spanish territory** of any of the goods of the Spanish Historical Heritage". Art. 45 RD 111/86
- Art. 36 EC Treaty: allows **exceptions to the free movement of goods** in the case of cultural goods, but such exceptions cannot be systematic; they must only affect goods of an exceptional interest for the country.

Export rules:

- Not subject to export: **Goods of Cultural Interest BIC** (or those under a procedure of being classified as BIC) and goods that cannot be exported as a precautionary measure. Only temporary export permitted
- Can be exported with export license: goods of **more than 100 years and Inventoried goods** (or subject to the procedure for their inclusion in the Inventory)

Consequences of export without licence:

Art. 29 SHHL:

- The goods belong to the state.
- They cannot be transferred and are not subject to prescription.



"Head of a young woman". Picasso. MNCARS

Arts. 46 CE, 75 y 76.1.h) SHHL y 2.2.a), 3.1, 5, 11 y 12 LO12/95:

- Crime of smuggling (= o + 50.000 euros) or administrative offence of smuggling
- The State has the exclusive power to act in the defence of the cultural, artistic or monumental heritage against illegal export and looting (Artículo 149.1.28.^a SC).

Types of export:

- Temporary
- Definitive
- Temporary with the possibility to sell

Consequences of the denial of the export licence:

- Prevents the exit of the good outside the Spanish territory
- Constitutes an irrevocable offer of sale of the good to the State for a period of 6 months (art. 33 SHHL, 50 RD 111/86)
- Initiation of procedure to protect the good (art. 48.2 RD 111/86)
- Can the Administration be liable for the damage arising from the refusal of the licence? (art. 32 Law 40/2015)

"San Francisco en éxtasis". El Greco. Private collection



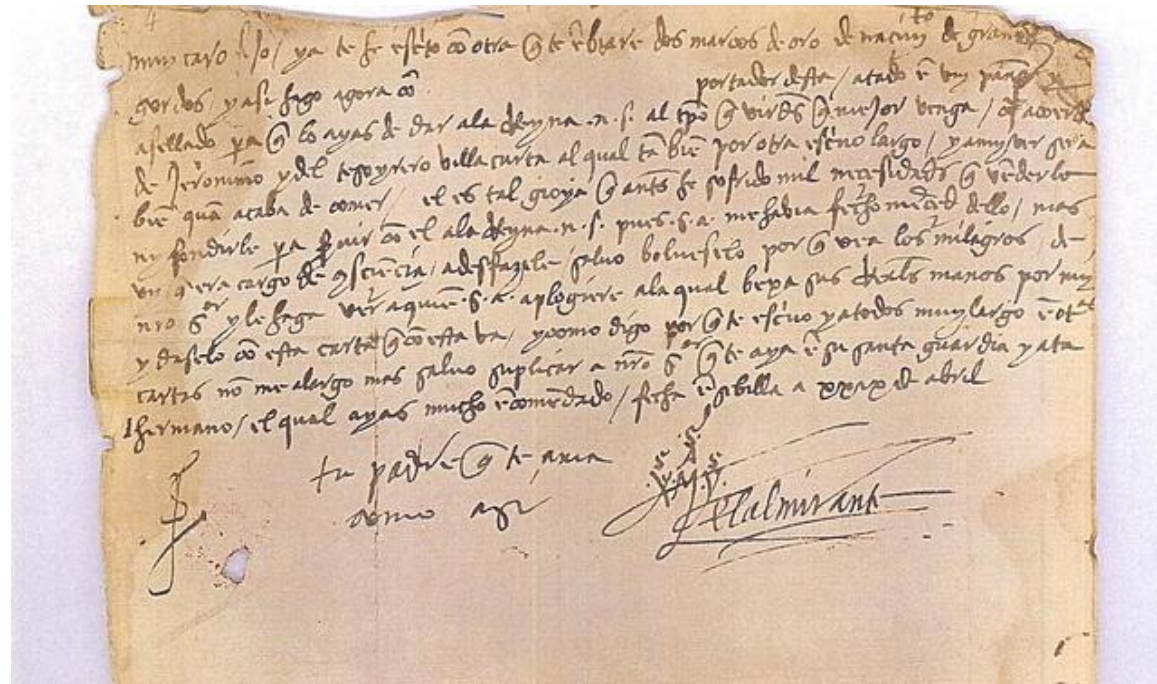
Main problems:

- Previous authorisation for all goods of more than 100 years. Workload for the Administration (15.826 applications in 2016, 12.653 in 2017)
- Licences are issued for one year
- Lack of audience to the person interested in the export
- Lack of published criteria. Lack of disclosure.



"Agnus Dei", Francisco de Zurbarán
Prado Museo

Export of works of art



Autograph letter. Cristobal Colón. Casa de Alba Foundation

Export of works of art



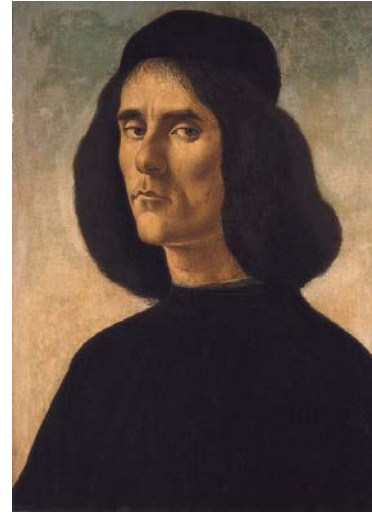
German cabinet 1555

Private collection



"End of journey", Joaquín Sorolla Bastida
Private collection

Temporary export:



“Portrait of Michele Marullo Tarnaniota”
Sandro Botticelli. Private collection

Arts. 31 SHHL and 52, 53 y 54 RD 111/86:

- The applicant has to state: title, identification of the good, purpose, duration of export
- The licence shall determine: the duration, return conditions and other guarantees for the conservation of the temporary exported good
- If the return conditions are not fulfilled, the export becomes illegal

Need to balance:

- Movement of works of art for the development of the art market and Spanish heritage to be known and valued abroad
- Protection of Spanish Cultural Heritage impeding the export of goods of an exceptional importance
- Different parties involved have to act in good faith

Thank you